

## **REMARKS**

Claims 5 - 22 were pending in this application.

Claims 5 - 22 were rejected.

Claim 6 has been deleted.

Claims 11, 14, 15 and 19-22 have been amended.

### **L 35 USC 102 Rejections**

The Examiner has rejected Claims 5-7, 9-15, 17-20 and 22 under 35 USC 102(b) as being clearly anticipated by U.S. Patent No. 4,901,881 to McElroy.

The rejected claims contained three independent claims, which are Claim 11, Claim 17 and Claim 22.

The independent claims have been amended and are believed to be fully distinguishable over the cited prior art as is explained below.

#### **Claim 11**

Claim 11 of the present application sets forth an assembly. The claimed assembly includes a container. The container has an open top end of a predetermined maximum width. Also claimed as part of the assembly is an elastomeric cover element that is used to cover the open top end of the container. The cover element has an unstretched width that is smaller than the maximum width of the container's open top end. As such, the cover element must be elastically stretched into a stretched width that is greater than the maximum width of open top end of the container to cover the open top end of the container.

A grid pattern of openings is defined in the cover element. The grid pattern has multiple rows and multiple columns, wherein multiple openings are arranged in each of the rows and each of the columns. The openings are used to arrange flowers once the cover element is stretched over the open top end of the container.

The claimed structure of Claim 11 is not anticipated by the McElroy patent.

**The McElroy patent** discloses an elastic lid for a cup. In the preferred embodiment, the lid is for a “disposable cup such as found in fast food restaurants”. See McElroy, column 6, lines 53-54. In the elastic lid is an aperture (20) for receiving a drinking straw. See McElroy, column 8, lines 10-14. As such, only one or possibly two drinking straw apertures are in the lid.

As applied to the wording of Claim 11, the McElroy patent does not disclose an elastomeric cover element with a grid pattern of openings, arranged in multiple rows and columns. It is also clear that the McElroy patent fails to disclose multiple openings arranged in each of the rows and each of the columns of the grid pattern

Accordingly, it is clear that the McElroy patent does not disclose the matter contained in Claim 11 of the present application. The 35 USC 102 rejection for Claim 11 and its dependent claims should therefore be withdrawn.

#### Claim 19

Claim 19 sets forth a method of preparing a vase for a floral arrangement. The method includes providing an elastomeric cover that contains a plurality of openings, that are arranged in a grid pattern of multiple rows and multiple columns. It is also specifically claimed that multiple openings are present in each of the rows and the columns;

As has been previously stated, the McElroy patent does not disclose an elastomeric cover with a grid pattern of openings having multiple openings in each of a plurality of rows and columns. As such, the McElroy patent does not disclosed the method step of providing such an elastomeric cover.

Accordingly, it is clear that the McElroy patent does not disclose the matter contained in Claim 19 of the present application. The 35 USC 102 rejection for Claim 19 and its dependent claims should therefore be withdrawn.

#### Claim 22

Claim 22 is a claim that sets forth a floral arrangement cover for a vase. The claimed cover has an elastic planar top surface in which are defined a plurality of openings. Again it is

claimed that the openings are arranged in a grid pattern of multiple rows and multiple columns, wherein multiple openings are disposed within each of the rows and the columns.

The McElroy patent does not disclose a vase cover with an elastic top surface that is divided into a grid pattern of openings. Accordingly, the matter of Claim 22 and its dependent claims is clearly distinguishable over the McElroy patent.

## **II. 35 USC 103 Rejections**

The Examiner has rejected Claims 8 and 16 under 35 USC 103 as being unpatentable over McElroy in further view of U.S. Patent No. 2,876,587 to Saks.

Claim 8 depends from independent Claim 22. Claim 16 depends from independent Claim 11. Claim 22 and Claim 11 are distinguishable over either McElroy for the reasons previously presented. The Saks patent does not address the deficiencies of the McElroy patent as applied to the wording of the independent claims. The Saks patent merely shows a plastic flower holder that is made of transparent plastic. The Saks patent makes no disclosure of an elastomeric cover with a grid pattern of openings that is stretched over a vase. Accordingly, the combination of Saks with either the McElroy patent fails to disclose the matter claimed by the present invention.

Claims 5, 6, 7, 9, 10 and 19-22 were rejected under 35 USC 103(a) as being unpatentable over EP0182453 to Turner in view of McElroy.

The Turner patent discloses a flower arrangement device. No disclosure is made of that device being elastic and having slots that open when the device is stretched. **The Turner patent** discloses an open-mesh cover made from “one-sixteenth inch diameter plastic rods spaced one inch apart and fastened to a second set of such rods having their longitudinal axis at an angle of about 90 degrees”. *See Turner page 4, second paragraph.*

In the preferred embodiment of the Turner patent, the open-mesh cover ‘is held securely in place by a snap-lock mechanism.’ *See Turner, page 4, third paragraph.*

It is obvious from the description of Turner, that a static plastic mesh cover is described

that is molded to fit only a one sized container. The mesh cover can in no manner be stretched to fit containers of different shapes and sizes. It is therefore clear that the Turner patent does not disclose any type of cover element that is elastically stretched over a vase or any other type of container.

To address this obvious deficiency in the Turner patent, the Examiner again cites the McElroy patent. The McElroy patent discloses an elastic cover for a cup that has a drinking hole straw in it. In combination, neither the Turner nor the McElroy patent discloses any type of cover for a vase or similar container, where the cover deforms and elastically stretches around the vase, thereby stretching a grid pattern of many openings across the top of the vase for use in floral arrangements.

Accordingly, it is clear that the Turner and McElroy patents do not disclose the matter contained in pending claims. The 35 USC 103 rejection should therefore be withdrawn.

The Examiner's rejection based upon the cited references requires a selective combination of various elements before the references can be applied to the pending claims. The Applicant has already won an appeal on this point. The Board Of Appeals is consistent in its requirements regarding hindsight reconstruction. The law is clear. When prior art references require selective combination to render the claims of an application obvious, there must be some reason for the combination other than hindsight gleaned from the invention itself. See *Interconnect Planning Corp. v. Feil* 774 F.2nd 1138, 227 USPQ 543 (Fed Cir 1985), and *Ashland Oil, Inc.* 776 F.2nd 281, 227 USPQ 657 (Fed Cir 1985). Something in the prior art as a whole must suggest the desirability and thus the obviousness of making the combination. See *Lindermann Maschinenfabrik GmbH v. American Hoist and Derrick Co.* 730 F.2nd 1452, 221 USPQ 481 (Fed Cir. 1984), and *Uniroyal Inc. v. Rudkin-Wiley Corp.* 5 USPQ 2nd 1434 (1988).

As the court stated in *Uniroyal*, 837 F.2nd at 1051, 5 USPQ2nd at 1438, "it is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention." In regard to the matter set forth in Claims 11,

Claim 19 and Claim 22, the prior art cited simply does not disclose any undersized vase cover that elastically stretches over a vase to provide a grid structure of openings across the face of the vase. Since nothing in the cited art suggests what was claimed, the Examiner's combination is without motivation and is wrongful.

**The Examiner has again rejected Claim 8 under 35 USC 103(a) as being unpatentable over Turner in view of Saks.**

The Applicant does not understand this rejection and is assuming it was made in error. Any Turner/Saks rejection is moot. The Board Of Appeals has already ruled that there is no motivation to have modified Turner in view of Saks to arrive at the subject matter of the independent claims. See Decision On Appeal, Appeal No. 2003-1855, page 10, last paragraph.

**IV. SUMMARY**

Having fully distinguished the pending claims over the cited art, this application is believed to stand in condition for allowance. However, if the Examiner is of the opinion that such action cannot be taken, the Examiner is requested to call the applicant's attorney at (215) 321-6772 in order that any outstanding issues may be resolved without the necessity of issuing a further Office Action.

Respectfully Submitted,



Eric A. LaMorte  
Reg. No. 34,653  
Attorney For Applicant

LaMorte & Associates  
P.O. BOX 434  
Yardley, PA 19067  
(215) 321-6772